

State of California



Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 • • • 1100 K STREET BUILDING, SACRAMENTO, 95814

Technical Assistance • • Administration • • Executive/Legal • • Enforcement
(916) 322-5662 322-5660 322-5901 322-6441

July 31, 1984

Natalie E. West
City Attorney
City of Berkeley
2180 Milvia Street
Berkeley, CA 94704

Re: Your Request for Advice
Our File No. A-84-179

Dear Natalie:

Thank you for your letter requesting advice from this office on behalf of Kathleen Burgess DeVries, a recently elected member of the Berkeley Rent Stabilization Board concerning her obligations under the conflict of interest provisions of the Political Reform Act.^{1/}

FACTS

Ms. DeVries is a tenant whose landlord owns approximately 12 units in Berkeley. For the past six or seven years, she has cared for the garden at the apartment building where she lives. Originally she received a rent reduction in exchange for the gardening services, but she now pays full rent for her apartment and receives \$90 each month from her landlord for her work.

The ordinance establishing the Berkeley Rent Board originally provided that "commissioners shall not be necessarily disqualified from exercising any of their powers and duties on the grounds of a conflict of interest solely on the basis of their status as landlord or tenant." In its Overstreet Opinion, the Commission found that the implicit intent of this provision and the ordinance read as a whole was to allow landlords to participate in rent board decisions which affected the rental property industry across the board. 6 FPPC Opinions 12 (1981). The ordinance has since been amended to remove the quoted provision. Section 121(3) of the Berkeley Charter currently provides in relevant part that "[d]ecisions by the board have a material financial effect on members of the rental industry

^{1/} Government Code Sections 81000-91014. All statutory references are to the Government Code.

Natalie E. West
July 31, 1984
Page 2

different from the general public." You stated that the Charter change was made in response to the Commission's Overstreet Opinion and was intended to nullify the ruling.

ANALYSIS

As you know, Section 87100 prohibits a public official from participating in any governmental decision in which she has a financial interest. Section 87103 defines "financial interest" to include a reasonably foreseeable material financial effect on a source of income to the office aggregating \$250 or more in value within the 12 months preceding the decision. Accordingly, since Ms. DeVries receives income from her landlord which exceeds \$250 in any 12-month period, he is a "source of income" to her within the meaning of Section 87103(c), and she must refrain from participating in any rent board decisions which could have a material financial effect on him. This may include the decisions on the annual general adjustment of rent ceilings if the foreseeable effect of the adjustment on Ms. DeVries' landlord were material.

As noted above, the Commission's Overstreet Opinion concerning the Berkeley Rent Control Ordinance was essentially nullified by the change to the ordinance. Therefore, the Commission's finding, pursuant to the terms of 2 Cal. Adm. Code Section 18703, that the intent of the ordinance was to treat the rental property industry in Berkeley as a significant segment of the public generally is no longer valid. Absent such a finding, the usual rules on public generally are applicable. In the case of the rental property industry, the Commission has determined that the owners of four or more rental units are not a significant segment of the public generally. Ferraro Opinion, 4 FPPC Opinions 62 (No. 78-009, Nov. 7, 1978). Since Ms. DeVries' landlord owns 12 rental units, the public generally exception does not apply. If the foreseeability and materiality tests are met, she must disqualify herself from participation in a Rent Board decision.

If I can be of further assistance, please feel free to contact me at (916) 322-5901.

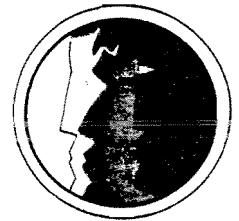
Sincerely,



Diane Maura Fishburn
Counsel
Legal Division

DMF:plh

City of Berkeley



LEGAL DEPARTMENT
2180 MILVIA STREET
BERKELEY, CALIFORNIA 94704

(415) 644-6380

June 28, 1984

State of California
Fair Political Practices Commission
1100 K Street Building
Sacramento, CA 95814

Attention: Diane Fishburn

Re: Request for Advice-Government Code §83114

Dear Sir or Madam:

This letter constitutes a request for advice under Government Code §83114 concerning the following facts:

Kathleen Burgess DeVries was recently elected to the City of Berkeley Rent Stabilization Board. She is a tenant whose landlord owns approximately 12 units. For the past six or seven years, she has cared for the garden that goes with her apartment. Originally she received a rent reduction in exchange for gardening services. Several years ago, when rent control was implemented in the City of Berkeley, the rent reduction was eliminated. She now pays the full market value for her apartment, but each month her landlord pays her \$90 for her gardening work. Thus, her landlord is a "source of income" within the meaning of Government Code §87207(a)(1).

The ordinance establishing the City of Berkeley rent board originally provided that "commissioners shall not be necessarily disqualified from exercising any of their powers and duties on the grounds of a conflict of interest solely on the basis of their status as landlord or tenant." In the opinion requested by Martin Overstreet, 6FPPC Ops 12 (1981) the commission concluded that this provision permitted landlords to participate in decisions which will have a general affect on the City of Berkeley rental property industry. The ordinance has since been amended to remove that provision. At the present time, section 121(3) of the City of Berkeley Charter provides in relevant part "Decisions by the board have a material financial effect on members of the rental industry different from the general public."

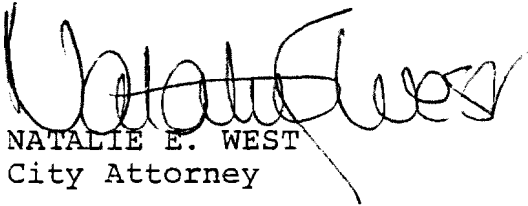
Based on these facts, is Ms. DeVries required to disqualify herself from making or participating in the making of decisions

To: State of California
Fair Political Practices Commission
June 28, 1984
page 2

generally affecting the rental industry in the City of Berkeley. Specifically, is Ms. DeVries required to disqualify herself from participating in decisions concerning the annual general adjustment of rent ceilings.

Thank you for your prompt response to this inquiry. I look forward to supplying any additional information you may require.

Very truly yours,



NATALIE E. WEST
City Attorney

NEW:b

cc: Kathleen Burgess DeVries